IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOSE FERMIN AND JUAN CARLOS FERMIN, Plaintiffs. v. INDUSTRIAL AUTOMATION CONTROL LLC and HOWMEDICA OSTEONICS CORP., Defendants.	CASE NO: 2:16-CV-02731-SDW-LDW NOTICE OF MOTION DAY: MAY 15, 2017

DEFENDANT HOWMEDICA OSTEONICS CORPORATION'S BRIEF IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant Howmedica Osteonics Corp. a/k/a Stryker Orthopaedics ("Howmedica"), by and through its undersigned counsel, Fisher & Phillips LLP, files this Brief in Support of its Motion for Judgment on the Pleadings against Defendant Industrial Automation Control LLC ("IAC") pursuant to Rule 12(c) of the Federal Rules of Civil Procedure seeking indemnification and, in support thereof, avers as follows:

I. RELEVANT BACKGROUND

On or about May 13, 2016, the underlying lawsuit was initiated by two former IAC employees, Jose Fermin and Juan Carlos Fermin ("Fermins"), when they filed their Complaint alleging that they were employed by IAC for a number of years, worked more than forty hours per week, and were not paid overtime in violation of the Fair Labor Standards Act and New Jersey's Wage and Hour Law. On March 30, 2017, the Fermins filed an Amended Complaint adding additional potential plaintiffs consisting of other IAC employees who were assigned to perform work at Howmedica's New Jersey facility (collectively "Plaintiffs"). Defendant

Howmedica filed its Answer to the First Amended Complaint and Separate Defenses on April 11, 2017.

All of the Plaintiffs were IAC employees, and performed work at Howmedica's New Jersey facility pursuant to a contract by which Howmedica engaged the services of IAC. Since Plaintiffs were IAC employees, Howmedica denies any and all liability for any compensation that may be owed to Plaintiffs.

Notwithstanding the denial of liability with respect to the underlying claims, IAC has a duty to indemnify and hold Howmedica harmless pursuant to an agreement between the parties. Specifically, on or about June 25, 2010, Howmedica and IAC entered into an Independent Contractor Agreement (the "Agreement"). A true and correct copy of the Agreement is attached as Exhibit "A" hereto and was previously attached to Howmedica's Answer to First Amended Complaint and Separate Defenses as Exhibit "A". Pursuant to the Agreement, IAC agreed to provide personnel for facility maintenance services ("Services") at Howmedica's facility in New Jersey. As part of the Agreement, IAC as the "Contractor" promised to provide Services in accordance with all laws, statutes and regulations:

> (d) Contractor represents and warrants that the Contractor's actions and performance of Services are and shall be in full compliance with all applicable federal, state, and local laws, statutes, acts, ordinances, rules, codes, standards, and regulations....

Exhibit "A" at paragraph 4(d).

The Agreement further contains an indemnification provision that reads, in pertinent part, as follows:

> Indemnification. Contractor agrees to indemnify and hold Stryker Orthopaedics harmless from any and all costs, expenses, claims or liabilities relating to the actions of, or injuries to, Contractor, or arising out of Contractor's breach of its representations and warranties or failure to perform contractor's obligations under this Agreement.

Exhibit "A" at paragraph 7.

Pursuant to the Agreement, IAC, as the Contractor, agreed to provide all of the Services in full compliance with applicable law. At all relevant times Plaintiffs were employed by IAC and, in the course of their employment with IAC, provided maintenance services to Howmedica pursuant to the Agreement. IAC was fully and solely responsible for properly paying Plaintiffs both as their employer and pursuant to the Agreement which provided it would follow all "federal, state, and local laws, statutes, acts, ordinances, rules, codes, standards, and regulations". Further, the Agreement, pursuant to which the Fermins and other IAC employees performed work at Howmedica's New Jersey facility, expressly provides that "[a]ny person employed by Contractor to perform hereunder shall not be deemed to be an employee of Stryker Orthopaedics, and Contractor and his/her suppliers, subcontractors, agents or representatives shall not be, or represent themselves to be, officers, employees, agents or representatives of Stryker Orthopaedics...". Howmedica did not employ Plaintiffs, or any other IAC employees, jointly or otherwise.

Subsequent to the termination of their employment by IAC, Plaintiffs filed this lawsuit against both Howmedica and IAC claiming that they, and through the collective action other IAC employees who were assigned to work at Howmedica's New Jersey facility, worked more than forty hours per week but were not paid overtime in accordance with federal and state law. Through the filing of this lawsuit, Plaintiffs are attempting to hold Howmedica liable for an alleged failure to follow federal and state laws regarding the payment of overtime for the services that Plaintiffs provided during the course of their employment with IAC.

The Agreement expressly provides that IAC will indemnify Howmedica for any "claims" arising out of IAC's "conduct" or "breach of its representations and warranties or failure to perform Contractor's obligations under this Agreement." The Agreement does not require a final adjudication of liability before indemnification applies, rather the Agreement expressly covers "claims" relating to IAC's "conduct" or failure to perform its obligations. This case involves exactly that: claims by the Plaintiffs arising out of the actions of IAC in compensating them and/or failing to properly compensate them, as well as failing to perform its obligation to properly compensate them under the law.

Howmedica asserts the right to indemnity and/or contribution and to be held harmless by IAC in this litigation as the claims relate to whether Plaintiffs were properly paid by IAC, in accordance with federal and state law. Therefore, IAC's obligation to indemnify Howmedica for any claims arising from its conduct or a breach of its obligation to provide its Services in accordance with federal and state law has been triggered. To date, IAC has failed and refused to indemnify Howmedica and its fees and expenses have continued to rise as additional IAC employees have been joined to the action and extensive discovery has been required.[1]

II. LEGAL ARGUMENT

When considering a motion for judgment on the pleadings under Rule 12(c), "a court must accept all of the allegations in the pleadings of the party against whom the motion is addressed as true and draw all reasonable inferences in favor of the non-moving party." *Allstate Prop. & Cas. Ins. Co. v. Squires*, 667 F.3d 388, 390 (3d Cir. 2012) (*citing Allah v. Al-Hafeez,* 226 F.3d 2476, 249 (3d Cir. 2000)). Judgment on the pleadings should be granted where the "movant clearly establishes there are no material issues of fact, and he is entitled to judgment as a matter of law." *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 220 (3d Cir. 2005).

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[1] Extensive discovery has been required of Howmedica in large part because IAC has failed to retain any records relating to the hours worked by its employees or the amounts paid to them. Based on IAC's failure to retain these records, Howmedica has had to shoulder the entire burden of searching for relevant documents relating to at least nineteen potential plaintiffs. Howmedica has had to retain the services of an outside vendor and has incurred, and will continue to incur, extensive attorney and paralegal fees culling through and compiling timecards, which were sent to IAC, and other records relating to nineteen IAC employees for a three year period.

The duty to defend and indemnify is a question of law to be determined solely by the allegations of the relevant complaint as compared to the language of the indemnification policy. *Visiting Nurse Ass'n v. St. Paul Fire Ins. Co.*, 65 F.3d 1097, 1100 (3d Cir. 1995). Indemnity contracts are interpreted in accordance with the rules governing the construction of contracts generally. *Ramos v. Browning Ferris Industries, Inc.*, 103 N.J. 177, 191-92 (1986). The fundamental rules of contract construction require that the plain language of a contract first be examined to determine the parties' intent as evidenced by the contract's purpose and surrounding circumstances. *State Troopers Fraternal Ass'n v. New Jersey*, 149 N.J. 38, 47 (1997). The objective in construing a contractual indemnification provision is to determine the intent of the parties. *Mantilla v. NC Mall Assocs.*, 167 N.J. 262, 272 (2001). If an indemnity provision is unambiguous then the words will presumably reflect the parties' expectations. *Zacarias v. Allstate Ins. Co.*, 168 N.J. 590, 595 (2001).

A review of the pleadings shows that there is no issue of material fact that remains to be resolved. The language of the Agreement could not be any clearer: if conduct of IAC results in any claims against Howmedica, IAC must indemnify and hold Howmedica harmless. There is no requirement that there be a judgment establishing that IAC actually breached the Agreement. The terms only require that there be a claim relating to IAC's conduct, which is the entirety of this litigation.

Further, any claim that indemnification should be denied on the basis that, if there was a violation of the FLSA, it would have been due to a breach of the parties' Agreement, is misplaced. The Agreement does not provide any exceptions to the indemnification obligation. Even if there was a breach by Howmedica – and no breach has even been asserted - that would result in a separate claim for that breach, not a waiver of the indemnification provision.

Therefore, Howmedica respectfully requests that the Court recognize the parties' expectations, and the express terms of their Agreement, and order IAC to honor its indemnification obligations to Howmedica.

III. CONCLUSION

For the foregoing reasons, Howmedica Osteonics Corp. a/k/a Stryker Orthopaedics ("Howmedica") respectfully requests that this Court order Defendant Industrial Automation Control LLC to indemnify and hold Howmedica harmless from any and all costs, expenses, claims or liabilities relating to the underlying lawsuit.

Respectfully submitted,

FISHER & PHILLIPS LLP

Date: April 19, 2017

By: */s/ Susan M. Guerette*

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EXHIBIT A

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") is made and entered into effective as of this 25th day of June, 2010 (the "Effective Date") by and between **HOWMEDICA OSTEONICS CORP.**, a New Jersey corporation with a place of business at 325 Corporate Drive, Mahwah, New Jersey 07430 (hereinafter referred to as "Stryker Orthopaedics"), and **INDUSTRIAL AUTOMATION CONTROLS**, with a place of business at 131 Main Street, Suite 210, Hackensack, New Jersey 07601 ("Contractor").

RECITALS

WHEREAS, Contractor has expertise in providing experienced personnel for facility maintenance services ("Services") services; and

WHEREAS, Stryker Orthopaedics desires to retain Contractor to perform such Services (as more particularly defined herein) subject to the terms and conditions set forth herein; and

WHEREAS, it is the intention of the Parties to establish this Agreement to govern the respective rights, duties and obligations of the Parties.

NOW THEREFORE, in consideration of the mutual promises and benefits made and contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Services. Contractor shall provide experience personnel as described on the attached Exhibit A. Stryker shall approve acceptance of such contractor personnel prior to commencement of work. All services performed hereunder shall be performed solely by Contractor and Contractor personnel, except as may be pre-approved in writing by Stryker Orthopaedics, and (b) Contractor shall furnish, at Contractor's own expense, all materials, equipment, vehicles, tools and supplies necessary to perform the Services, unless otherwise specified in Exhibit C.

2. Pricing and Payment. In full satisfaction for all Services provided by Contractor hereunder, Stryker Orthopaedics agrees to compensate Contractor as follows:

(a) Contractor Personnel Hourly Billing. Stryker shall pay fixed hourly rates for Contractor personnel as indicated on the attached Exhibit A. Over-time rates shall not apply under this Agreement. Weekly timecards shall be submitted to the appropriate Stryker contact for approval. Contractor shall maintain accurate billable hours and timekeeping records, and upon Stryker's request, such records shall be made available for Stryker's review. Contractor agrees that billable hours shall not include time for lunch or breaks.

(b) Small Projects Billing. Each project with a total cost less than ten thousand ($10,000) dollars shall be deemed a "Small Project". For each Small Project, Contractor shall provide Stryker with a price quote for material and labor, on the form attached hereto as Exhibit C. All material shall be billed to Stryker at Contractor's cost, with no more than a fifteen (15%) percent markup to cover Contractor's costs for handling and administration. The Parties agree that Contractor's freight expenses shall not include any markup fees or costs. All shipping shall be billed to Stryker at Contractor's cost, or at Stryker's option, Stryker shall manage all freight associated with material deliveries. Contractor shall submit original receipts for any expenses exceeding one hundred ($100) dollars for Stryker's approval. In the event a project management change order (Exhibit D) is submitted by Stryker, Contractor agrees that there shall be no premium charged nor a penalty issued for administrative fees.

(c) The Parties agree that there shall be no price increases during the term of this Agreement. If applicable, tiered pricing, volume discount and rebates shall be based on Stryker Corporation total annual spend. The following tiered pricing discount shall apply as follows :

Annual Spend	Discount
$2,000,000 - $2,499,999	3%
$2,500,000 - $2,999,999	5%
$3,000,000	7.5%

Such pricing discount shall be applied to the next issued invoice.

(d) Contractor shall invoice Stryker Orthopaedics, monthly, in writing with an itemized, accurate, complete and correct invoice for services provided during the preceding one month period and Contractor shall also provide a monthly statement of account for Stryker's review . In the event Stryker pays any non-contested invoice net-ten (10) days of receipt of the invoice, Supplier agrees that Stryker shall apply a two (2%) percent discount to the purchase price reflected on such non-contested invoice. Each invoice shall, at a minimum, provide sufficient detail to permit Stryker Orthopaedics to identify: (i) the Stryker manager responsible for services performed; (ii) the specific Services performed and the amount of time they took to perform; (iii) the date(s) on which Services were performed; (iv) the billable hours charged for such Services; (v) the designated Stryker representative responsible for requested services (vi) any applicable taxes chargeable under Subsection 2 (c); and (vii) any extraordinary charges that have been pre-approved by Stryker Orthopaedics in writing. Stryker Orthopaedics shall pay all such invoices within forty-five (45) days of receipt a sufficient invoice. In the event payment of an invoice is submitted beyond forty-five (45) days, Contractor shall be entitled to a one (1.0%) percent penalty on the next month's invoice. Stryker shall have the right to refuse any invoices submitted by Contractor, if services were rendered more than sixty (60) days from Stryker's receipt of said invoice. In the event of a good faith dispute with regard to an item appearing on an invoice, Stryker Orthopaedics may withhold the contested amount while the parties resolve the dispute. Stryker Orthopaedics' withholding of that payment will not constitute a breach of this Agreement or be grounds for Contractor to suspend its provision of any Services, it being recognized and understood by Contractor that the provision thereof is critical to Stryker Orthopaedics' business. To facilitate prompt payment, all invoices must be directed to, and received by Stryker Orthopaedics Accounts Payable Department. Any conflicts between the terms of an invoice and the terms of this Agreement shall be resolved in favor of this Agreement. Payment hereunder shall represent full and complete compensation for all obligations assumed by Contractor under this Agreement and for all inventions, improvements, and copyright or patent rights assigned to Stryker Orthopaedics as more fully set forth in Section 10.

(e) Stryker Orthopaedics shall pay all sales, excise, or use taxes due on the transactions hereunder or provide Contractor customary proof that the transactions are exempt from sales taxes. Invoices shall separately identify any tax (including Value Added Taxes as exclusively net extra) and shall include either Contractor's sales tax or use tax permit number. Contractor shall pay any other taxes and charges, including without limitation, assessments or fines arising from Contractor's performance of the transactions under the Agreement, including taxes based upon Contractor's net income and penalties or fees imposed due to failure to file or pay collected sales or use taxes. Except for those taxes noted herein, no extra charges of any kind, including without limitation transportation charges, shall be allowed unless agreed to in writing by Stryker Orthopaedics prior to performance.

(f) Stryker Orthopaedics shall reimburse Contractor for only those out-of-pocket, documented expenses (collectively, "Expenses") reasonably incurred, with Stryker Orthopaedics' prior written approval, in rendering Services in strict accordance with the Stryker Orthopaedics Travel and Expense Reimbursement Guidelines in effect at the time a service is provided. A courtesy copy of Stryker Orthopaedics' current Travel and Expense Reimbursement Guidelines is attached hereto as Exhibit B. All Expenses not paid directly by Stryker Orthopaedics shall be reimbursed to Contractor within forty-five (45) days after receipt of Contractor's complete, correct and audit worthy invoice. All Expense reimbursements shall be made at Contractor's direct out-of-pocket costs, without any markup for overhead, administrative costs, or otherwise.

(g) For a period of at least two (2) years following the date particular Services are provided to Stryker Orthopaedics under this Agreement, Contractor agrees to maintain accounting records necessary to verify the basis for all charges billed to Stryker Orthopaedics hereunder. At the request of Stryker Orthopaedics, those records shall be made available in electronic media, in addition to paper, to allow Stryker Orthopaedics to review and analyze the data contained therein. Stryker Orthopaedics shall have the right to audit records annually for Services rendered over the course of the prior two years. Each such audit shall be conducted during normal business hours upon at least seven (7) days prior written notice to Contractor. Subject to the following sentences, each party shall bear its own costs and expenses in connection with such audit. If the audit discloses that Contractor overcharged Stryker Orthopaedics, Stryker Orthopaedics shall have the right to either offset that overcharge against the next payment due hereunder (if any) or require Contractor to pay such overcharge to Stryker Orthopaedics within ten (10) days of Contractor's receipt of the audit results.

(h) Mechanic's Liens. Contractor shall not permit any mechanic's, materialman's or similar lien to stand against any real property owned by Stryker Orthopaedics for any labor performed or material furnished in connection with any work performed or caused to be performed by Contractor. If any such lien is filed against any real property owned by Stryker Orthopaedics, Contractor shall discharge such lien within thirty (30) days after it was filed and if Contractor fails to do so, Contractor shall indemnify and hold Stryker Orthopaedics harmless for any and all damages or costs Stryker Orthopaedics may incur, including reasonable attorney fees, as a result of Contractor filing a lien in violation of this paragraph.

3. Term and Termination.

(a) The term of this Agreement shall commence on the Effective Date and shall terminate on June 24, 2011, unless terminated sooner as provided herein. Thereafter, this Agreement, including any subsequent renewal terms, may be renewed annually by mutual consent in writing. Notwithstanding the foregoing provisions, either party may terminate this Agreement for any reason or no reason whatsoever, without cause or penalty, by providing thirty (30) days prior written notice to the Contractor.

(b) Upon termination of this Agreement, Contractor shall immediately cease all work, cease to represent itself as providing services to Stryker Orthopaedics and shall deliver to Stryker Orthopaedics: (i) a report describing the current state of the Services to be provided by Contractor under this Agreement as of the date of termination; (ii) all Stryker Orthopaedics Confidential Information in its possession; and (iii) all work product, including, but not limited to, programs, reports, data, flow diagrams, materials and all work in process, in whatever state of development they may exist on the date of termination. Upon delivery and receipt of the above, Stryker Orthopaedics shall pay Contractor, as expeditiously as is practicable, for the Services performed to the reasonable satisfaction of and accepted by Stryker Orthopaedics, as of the date of termination, at the applicable rates and for the expenses incurred in connection therewith that are reimbursable under the terms of this Agreement.

4. Representations and Warranties.

(a) Contractor represents and warrants that it has the experience, capability and resources to efficiently and expeditiously perform the Services under this Agreement. Contractor further represents and warrants that it shall perform the Services in a workmanlike manner and with professional diligence and skill and Contractor further represents and warrants that the performed Services shall be in conformity with all applicable specifications and other performance requirements as required by Stryker Orthopaedics.

(b) Unless Contractor provides a greater warranty to any other customer (and if that is the case, Contractor shall be deemed to provide Stryker Orthopaedics with the greater warranty in addition to any warranties herein), Contractor warrants all Services shall be performed without material defect or error, and in conformity with the specifications, functions and other performance requirements as required by Stryker Orthopaedics, and shall be free and clear from all defects in material and workmanship for a period of one (1) year from the date of Stryker Orthopaedics' final acceptance of the Services. In the event of any such defect or failure, Stryker Orthopaedics may, at its option, either: (i) require that Contractor, within ten (10) days after receipt of notice from Stryker Orthopaedics, cure same to Stryker Orthopaedics' reasonable satisfaction at Contractor's sole expense, including the cost of replacement and restoration of the premises and property damaged, or destroyed as a result of the failure or the cure; or (ii) correct such defect or failure including all costs described in clause (i) above and charge Contractor with the costs of such correction.

(c) Contractor represents and warrants that its execution, delivery and performance of this Agreement, and Stryker Orthopaedics' subsequent use of Services and any deliverable provided hereunder, does not and shall not (i) conflict with, or result in a material breach of any material agreement, judgment or court decree by which Contractor is bound, or (ii) violate any copyright, patent, trade secret, trademark or other intellectual property or proprietary right of any third party nor has any claim of such infringement been threatened or asserted. Contractor has a consulting obligation to notify Stryker Orthopaedics in the event a claim of infringement is threatened or asserted.

(d) Contractor represents and warrants that the Contractor's actions and performance of Services are and shall be in full compliance with all applicable federal, state, and local laws, statutes, acts, ordinances, rules, codes, standards, and regulations. Contractor further represents and warrants that as required by the United States' immigration laws, Contractor and its employees, agents, and subcontractors are entitled to work in the United States.

(e) Contractor represents and warrants that it currently has, or prior to the commencement thereof, shall obtain, pay for, and maintain any and all licenses, permits, inspections, fees, and qualifications required to perform the Services. In addition, if the Services are to be performed on Stryker Orthopaedics' premises, Contractor represents and warrants that Contractor shall comply with all applicable safety laws and Stryker Orthopaedics' then current safety and other applicable regulations.

(f) Contractor represents and warrants that its employees who have contractual influence on behalf Contractor are not related by blood or marriage to any of Stryker Orthopaedics' employees. Contractor further represents and warrants that, with respect to the subject matter of this Agreement, it has not provided any form of compensation or remuneration, or promise thereof, to any Stryker Orthopaedics employee, nor does any Stryker Orthopaedics employee act on behalf of Vendor.

(g) Contractor represents and warrants that it is not currently debarred, suspended or otherwise excluded by any governmental agency from receiving federal contracts or participating in any federal or state funded program. Contractor further certifies by accepting this Agreement or any part thereof that Contractor's employees, agents, representatives or subcontractors assigned to perform Services under this Agreement are not debarred, suspended or proposed for debarment by the federal government. Debarment, suspension or proposed debarment by the federal government shall constitute grounds for automatic termination of this Agreement by Stryker Orthopaedics.

(h) Contractor represents and warrants to Stryker Orthopaedics that there is no action, suit, claim, investigation or proceeding pending or, to the best of its knowledge, threatened against it that, if adversely decided, might adversely affect (i) Contractor's ability to enter into this Agreement; or (ii) the performance of its obligations hereunder; or (iii) any representatives or warranties hereunder.

(i) Contractor represents and warrants that to the extent the performance of the Services hereunder require Contractor's presence during surgery, Contractor shall obtain any and all proper authorizations from the medical treatment facility, and that Contractor shall not offer any patient care or treatment, or medical or nursing assistance while performing Services under this Agreement.

5. Independent Contractor.

(a) *Relationship of the Parties*. Contractor shall perform this Agreement as an independent contractor, and this Agreement shall not be construed to create between the Parties the relationship of principal and agent, joint-venturers, co-partners, employer and employee, franchiser and franchisee or any

other similar relationship, the existence of which is expressly denied by each Party. Contractor represents that Contractor is engaged in a similar business for other clients. Contractor shall conduct its business under its own name as an independent contractor, and is hereby expressly prohibited from holding itself out as an employee, agent, partner or representative of Stryker Orthopaedics. Any person employed by Contractor to perform hereunder shall not be deemed to be an employee of Stryker Orthopaedics, and Contractor and his/her suppliers, subcontractors, agents or representatives shall not be, or represent themselves to be, officers, employees, agents or representatives of Stryker Orthopaedics and shall not bind, or attempt to bind, Stryker Orthopaedics to any agreement, liability or obligation of any nature.

(b) *Right to Direct Services.* Stryker Orthopaedics shall have no right to control the manner, means, or method by which Contractor performs the Services called for by this Agreement. Rather, Stryker Orthopaedics shall be entitled only to direct Contractor with respect to the elements of Services to be performed by Contractor and the results to be derived by Stryker Orthopaedics, to inform Contractor as to where and when such Services shall be performed, and to review and assess the performance of such Services by Contractor for the limited purposes of assuring that such Services have been performed and confirming that such results were satisfactory.

(c) *No Right to Participate in Stryker Orthopaedics Plans.* No amounts payable by Stryker Orthopaedics under this Agreement shall be considered salary for pension and incentive compensation purposes. Furthermore, because Contractor is engaged in his/her own independent business, Contractor is not eligible for and shall not participate in Stryker Orthopaedics' retirement plans, insurance plans and any other benefits normally afforded to employees of Stryker Orthopaedics. Contractor shall bear all responsibility and liability for the payment of all federal, state and local income taxes due on money received from Stryker Orthopaedics and shall file all appropriate tax returns and other forms with respect thereto. Moreover, Contractor shall be solely responsible for any worker's compensation, FICA, withholding tax, unemployment compensation, and any other federal or state payment in connection with the Services. Contractor shall indemnify and hold Stryker Orthopaedics and its affiliates harmless from and against any and all such liabilities or claims including, but not limited to, interest assessed or penalty and reasonable attorneys fees incurred, arising from Contractor's failure to pay such taxes.

6. Insurance.

(a) Contractor shall carry and provide certificates of insurance with Stryker Orthopaedics shown as a certificate holder of the following insurance coverage during the term of this Agreement: (i) Contractor shall carry Worker's Compensation insurance with limits as required by the laws of the state in which work is being performed and Employer's Liability insurance with a limit of at least $1,000,000 per accident; (ii) Contractor shall carry Commercial General Liability insurance with limits of at least $2,000,000 for each occurrence and $2,000,000 annual aggregate. Such insurance shall name Stryker Orthopaedics as an additional insured; (iii) Contractor shall carry Automobile Liability insurance with a combined single limit of at least $1,000,000 per accident. Such insurance shall name Stryker Orthopaedics as an additional insured; (iv) Contractor shall carry employee theft & dishonesty (i.e., fidelity) insurance coverage with a limit of at least $1,000,000 for claims arising from fraudulent or dishonest acts on the part of any Contractor employee and Contractor providing Services under this Agreement. If any of the proceeding insurance is written on a claims made basis, such insurance must be subject to a retroactive date that precedes the effective date of this Agreement and Contractor shall be obligated to maintain such coverage subject to such retroactive date, or purchase an extended reporting period (i.e., tail coverage), if necessary, for a period of at least three years (3) following the end of the term of this Agreement

(b) The above insurance shall not be canceled or the coverage hereunder reduced. Stryker Orthopaedics shall be provided with a certificate or certificates for all insurance policies required above. Such insurance shall be primary and noncontributory to any insurance maintained by Stryker Orthopaedics. If any person or entity to be assigned to Stryker Orthopaedics is a subcontractor of Contractor, Contractor shall furnish Stryker Orthopaedics, upon request, with evidence that Contractor's insurance covers such subcontractor or that such subcontractor of Contractor maintains the same types and level of insurance as that required of Contractor hereunder. Contractor shall be responsible for and shall bear the risk of loss of or damage to any property of Contractor. All policies of insurance maintained by Contractor shall contain an endorsement waiving any right of subrogation against Stryker Orthopaedics and its affiliates. Contractor shall require each of its subcontractors that may enter upon the premises of Stryker Orthopaedics or its affiliates maintain the insurance required by this provision. In no event shall an insurance requirement of this provision be deemed to limit the liability or responsibility of Contractor or any of its subcontractors.

7. Indemnification. Contractor agrees to indemnify and hold Stryker Orthopaedics harmless from any and all costs, expenses, claims or liabilities relating to the actions of, or injuries to, Contractor, or arising out of Contractor's breach of its representations and warranties or failure to perform Contractor's obligations under this Agreement.

8. Confidentiality.

(a) Contractor must protect and may not disclose to any third party: the terms of this Agreement; information it receives in the course of performing services hereunder; and any other information provided by Stryker Orthopaedics to Contractor in connection with this Agreement. Contractors may disclose such confidential information only with Stryker Orthopaedics' prior written approval, except as may be required by law or by lawful order of any applicable government agency.

(b) Contractor acknowledges that any breach or threatened breach of this paragraph would cause irreparable harm to Stryker Orthopaedics and that a remedy at law would be inadequate to remedy such a breach or threatened breach. Contractor further agrees that the provisions of this paragraph may be enforced by way of a restraining order or injunction, if a court so finds, in addition to any other remedies that may be available by law.

9. Non-Solicitation. The parties agree that during the term of this Agreement, and for 6 months after termination or expiration (regardless of the reason for termination) neither party may solicit for employment, retain, employ, or contract with any employees or consultants of the other who is providing or has provided services related to this Agreement ("Non-Solicitation Period"), except as may be provided for herein. For purposes of this Agreement, "solicit" shall mean the direct targeting and seeking out of one party's employees and shall not include general public solicitation notices (advertisements, job boards, etc.) or whereby employees of one party seek out the other party.

10. Invention. In consideration of the payments to be made hereunder, Contractor agrees that any patentable discovery, patent or copyrightable work which arises from Contractor's Services is the sole property of Stryker Orthopaedics and Contractor expressly waives any right to ownership of any patent that may be developed or able to be developed arising directly or indirectly as a result of the Services, as well as any royalty or compensation of any kind. Contractor agrees to assign any right, title and interest in any intellectual property that arises from Services provided under this Agreement.

11. Force Majeure.

(a) In the event that either Party is unable to perform any of its obligations under the Agreement, or to enjoy any of its benefits because of fire, acts of terrorism, natural disaster, action or decrees of governmental bodies (a "Force Majeure Event"), the Party that has been so affected shall immediately give written notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under the Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may terminate the Agreement by giving written notice to the other Party. Delays in delivery due to Force Majeure Events shall automatically extend the delivery date for a period equal to the duration of such Force Majeure Events. Any acceptance or warranty period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such Force Majeure Event. As applied to this Section 12 and to determine whether an event is wholly beyond control of a Party, strikes, slowdowns or other labor related delays are not Force Majeure Events.

(b) Notwithstanding the provisions set forth in Section 11(a), a Force Majeure Event shall not include any governmental action of an enforcement nature that arises from or relates to Vendor's failure to comply with any federal, national, state, provincial, or local law, statute, regulation or ordinance applicable to Vendor's performance hereunder or Vendor's manufacture, storage or handling of materials associated with such performance.

12. Subcontractors and Mechanic's Liens. Contractor shall not permit any Subcontractor to file any mechanic's materialman's or similar lien against any real property owned by Stryker Orthopaedics for any labor performed or material furnished in connection with any work performed or caused to be performed by Subcontractor. If any such lien is filed against any property owned by Stryker Orthopaedics, Contractor shall discharge such lien by paying the amount secured thereby or providing a bond within thirty (30) days after it was field and Contractor shall indemnify and hold Stryker Orthopaedics harmless for any and all damages or costs to Stryker Orthopaedics may incur, including reasonable attorneys fees, as a result of Subcontractor filing a lien in violation of this paragraph.

13. General Terms. Except as provided below, neither Party may assign this Agreement without the prior written consent of the other Party, except that Stryker Orthopaedics shall have the right to assign this Agreement or any rights under or interests in this Agreement to any parent, subsidiary or affiliate of Stryker Orthopaedics. All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by successors and assigns of the Parties to this Agreement. This Agreement shall not confer any right or remedy upon any person other than the Parties hereto and their respective successors and permitted assigns. This Agreement and attachments referred herein constitutes the entire agreement between the Parties with respect to this subject matter and supersedes all prior negotiations and agreements between the Parties concerning the subject matter of this Agreement. Any modification or amendments to this Agreement must be in writing and signed by both Parties. If any provision of this Agreement is deemed illegal, invalid or unenforceable the Parties shall endeavor to replace it by another provision that shall as closely as possible reflect their original intention. No right or remedy conferred in this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given now or existing in law or in equity or by statute. The validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. IN NO EVENT SHALL EITHER PARTY BE LIABLE (WHETHER ARISING IN CONTRACT, TORT, WARRANTY OR OTHERWISE) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey as applicable to contracts made and to be performed in that state, without regard to conflicts of laws principles. The Parties consent to the personal jurisdiction and venue of the state and federal courts of Bergen County, New Jersey.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized corporate officers or representatives as of the date first above written.

HOWMEDICA OSTEONICS CORP.	INDUSTRIAL AUTOMATION CONTROLS
By: [signature]	By: Industrial Automation Control
Name: Fred Lorestani	Name: Javier A. Marte
Title: V.P., Mahwah Operations	Title: President
	06/28/2010

EXHIBIT A – SCHEDULE OF CONTRACTOR PERSONNEL

I. MAINTENANCE MECHANIC

Rate Per Hour: $45.00

Basic Requirement:

1. High school education
2. Trade school training or relevant equivalent military training is a plus
3. Ability to read, communicate and follow oral instructions in English
4. 3-5 years of industrial building maintenance experience
5. Ability to work in all shifts as required

Stryker Training Requirements:

1. Reporting, creating, closing of work order and various documentations as required and trained by Stryker
2. FDA – basic cGMP training
3. Personal hygiene, and Stryker code of conduct
4. Attend Stryker contractor orientation

Function:

1. Perform preventive maintenance and various trouble shooting and repair functions to sustain a 24/7 operation.
2. Perform work assignment according to Stryker SOP (standard operation procedure) or other Stryker procedural documentation.
3. Perform / assist in performing electrical, mechanical, hydraulic and pneumatic systems inspections following established procedures, SOPs or other written or verbal instructions.
4. Maintain daily, weekly and monthly inspection, cleaning and maintenance of building and HVAC, dust collector, scrubber, water treatment equipment, boiler, pump, heat exchanger, motors and fans.
5. Assist in repairing of robotic equipment under the direction of an electro / mechanical technician or supervisor.
6. Minor piping run, using pipe, tubing or compressed fittings.
7. Simple electrical wiring from low voltage DC circuit to 480 vac, 3 phase, 60 Hertz under the guidance of a ELECTRO / MECHANICAL mechanic to power specific equipment.
8. Assist in recovering or restoring electrical plant power system / machine operation.

EXHIBIT A
(continued)

II. SERVICE ENGINEER

Rate Per Hour: $65.00

Basic Requirement:

1. Associate Degree in Physical Science or Bachelor Degree in engineering
2. Knowledge in industrial building facilities such as dust collection equipment, etc.
3. Knowledge of electrical theory, components, electrical codes, ASME pressure vessel codes and practices.
4. Hands on experience with PLC components, programming, and automatic control theory; mechanical theory and pneumatic and hydraulic components.
5. Strong knowledge and experience with cutting tools and machine shop practice.
6. Being a self-starter, work without supervision, able to set up work plan, coordinate with colleagues, contractor and clients to carry out the work assigned.
7. Minimum or 7 years of heavy metal processing, plastic and / or investment-casting manufacturing experience or in a medical devices facility.
8. Have an understanding of equipment / facility commissioning and concept of equipment qualification.
9. Ability to observe and be self taught and using manuals and reference document.
10. Excellent communication and interpersonal skill. Be able to communicate with colleague, client, supervisor and contractor.
11. Operates personal computer: MS Word or Excel, and AutoCAD is a plus
12. Ability to work in various shifts as required.

Stryker Training Requirements:

1. Reporting, creating, closing of work order and various documentations as required and trained by Stryker.
2. FDA – basic cGMP training
3. Personal hygiene, and Stryker Code of Conduct and standard operation procedures.
4. Attend Stryker contractor orientation

Function:

1. Provide technical support to electrical / mechanical mechanics to trouble shoot and repair machine tools to sustain a 24/7 operation.
2. It is required that the company provided pager/cell phone be carried (in receiving mode) at all times in support of manufacturing.
3. Perform some / selected functions of electro-mechanical mechanic when required in support of production requirement.
4. Perform installation, monitoring, maintenance, repair, modification, and / or design modification, reprogramming of high-tech metal finishing equipment.
5. Perform electrical, mechanical, hydraulic and pneumatic systems inspections following best practices.
6. Diagnose equipment malfunction, sourcing of spare / replacement part for repair. Provide suggestion for improvement program.
7. Assist in repairing robotic equipment including, but not limited to CNC, EDM type

II. **SERVICE ENGINEER**

Rate Per Hour: $65.00

equipment.

8. Provide technical assistance in the maintenance of facility equipment including; but not limited to dust collectors, compressed air system, motors, fans, pumps, chiller, heat-exchangers, HVAC, exhaust equipment, boilers and waste water neutralization system, pharmaceutical grade (USP) water purification system, etc.
9. Provide technical assistance in the maintenance and repair of packaging equipment such as blister pack equipment and heat sealer.
10. Provide technical assistance in the maintenance of dip tank type parts cleaning line or surface treatment equipment.
11. Provide technical assistance in the response to system failures in recovering or restoring electrical power system / machine operation.
12. Acting as technical resource to Facility Maintenance for various mechanical codes such as NEC, ASME boiler code, plumbing code, certain aspects of Building Code.
13. Perform system start-up and operational checkout on systems including configuration, wiring, calibration, grounding and power testing.
14. Reload and reboot PLC, VFD and ATS to restore faulted equipment,.
15. Provide hardware and software application support assistance to mechanics.
16. Assist in all aspects of on-site connectivity of gases, waste treatment, and testing related to utilities as requested by project managers.

EXHIBIT A
(continued)

III. ELECTRO-MECHANIC

Rate Per Hour: $55.00

Basic Requirement:

1. High school education
2. Trade school specializing in machine tool or training certification in CNC type machine or relevant equivalent military training.
3. Knowledge of electrical or mechanical theory, components, codes and practices equivalent to a trade electrical journeyman or mechanical journeyman or higher level.
4. Knowledge and experience with cutting tools and machine shop practice.
5. Being a self-starter, work without supervision, able to set up work plan and material requirement, coordinate with colleagues, contractor and clients to carry out the work assigned.
6. Minimum 7 years of heavy metal processing, plastic and / or investment-casting manufacturing experience.
7. Knowledge of PLC controls
8. Ability to read, write, follow and give oral instructions in English.
9. Excellent communication and interpersonal skill. Be able to communicate with colleague, client, supervisor and contractor.
10. Operates personal computer: MS Word or Excel.
11. Ability to work in all shifts as required.

Stryker Training Requirements:

1. Reporting, creating, closing of work order and various documentations as required and trained by Stryker.
2. FDA – basic cGMP training
3. Personal hygiene, and Stryker Code of Conduct
4. Attend Stryker contractor orientation

Function:

1. Perform electro-mechanical repairs as required. There is no distinction between electrical or mechanical mechanic other than the strength of their knowledge. The work assignment is interchangeable, depending on the strength of the specialty required.
2. Perform some / selected functions of MAINTENANCE MECHANIC.
3. Perform preventive maintenance and various trouble shooting and repair functions to sustain a 24/7 operation.
4. It is required that the company provided pager/cell phone be carried (in receiving mode) at all times.
5. Perform electronic and electrical systems inspections following established procedures or other written or verbal instructions.
6. Perform mechanical, hydraulic and pneumatic systems inspections following established

III. ELECTRO-MECHANIC

Rate Per Hour: $55.00

standard operating procedures or other written or verbal instructions.

7. Diagnostic of equipment malfunction, sourcing of spare / replacement part for repair. Provide suggestion for improvement.
8. Repair or replace defective parts or equipment, utilizing manuals, drawings, specifications and other written or verbal instructions.
9. Trouble shoot malfunction equipment including, but not limited to, CNC, EDM, and various robotic equipment; control for process heating / cooling equipment
10. Trouble shoot and maintain facility equipment including, but not limited to dust collectors, compressed air & dryer system, motors, pumps, HVAC and exhaust equipment and control and waste water neutralization system.
11. Maintenance of packaging equipment such as blister pack equipment and heat sealer.
12. Maintenance of dip tank type parts clean line or surface treatment equipment.
13. Response to system failures in recovering or restoring electrical power system / machine operation.
14. Knowledge of the NEC (National Electrical Code) related to equipment function and installation.
15. Working knowledge of mechanical code such as ASME boiler code. Plumbing code, certain aspects of Building Code.
16. Assist in all aspects of on-site connectivity of electrical power and testing related to utilities as requested by project managers.

EXHIBIT A
(continued)

IV. PROJECT MANAGER

Rate Per Hour - $65

REQUIREMENTS

Education

Required degree in electrical or mechanical engineering.

Experience

1. Minimum of 7 years of experience in office building, manufacturing, construction and maintenance.
2. Position requires service during non-work hours to resolve emergency facility issues
3. Individual will supervise up to 10 contractor personnel and other staffs. The individual will be the primary point of contact to facility services / office services and for all matters pertaining to contractor support to Facility Maintenance.

Skills & Knowledge

1. Must possess a positive attitude and the ability to interact with government and contractor personnel.
2. Experience working in a FDA-GMP regulated industrial environment.
3. Project Management skill
4. Familiar with TPM
5. Must be able to work independently and in a team environment.
6. Accuracy and attention to detail.
7. Good communication skills; communicate respectfully with a diverse community.
8. Ability to interact with others with tact and diplomacy.
9. Initiative, sound judgment and ability to work independently.
10. Must be able to learn quickly and should possess very strong attention to detail and quality.
11. Ability to read and comment of building drawings
12. Familiar with P&ID (process & instrumentation diagram)
13. Familiar with PLC or electronic control equipment
14. Ability to use MS Office suite (Word and Excel)
15. Ability to use scheduling software such as MS Project or equal.

EXHIBIT B

STRYKER'S TRAVEL AND EXPENSE REIMBURSEMENT GUIDELINES

1. Stryker Orthopaedics will, to the extent provided for under its written agreement with Contractor, reimburse Contractor for out-of-pocket expenses actually and reasonably incurred by Contractor's personnel in connection with Stryker Orthopaedics-authorized travel and for lodging and meals while away from home performing services directly on behalf of Stryker Orthopaedics. Payment for time spent by Contractor's personnel on Stryker Orthopaedics' business shall only be made by Stryker Orthopaedics in accordance with the rates and other terms and conditions of Contractor's written agreement with Stryker Orthopaedics and these Guidelines. These Guidelines are designed to generally meet with IRS guidelines.

2. All Contractor expenses for which reimbursement is sought must be approved in advance by Stryker Orthopaedics.

3. All expenses over $25 must be accompanied by an original written receipt and an explanation as to why the expenses were incurred.

4. Each invoice for time spent by Contractor's personnel on behalf of Stryker Orthopaedics shall be accompanied by a detailed statement showing (i) the applicable rate, (ii) the time spent since the last invoice for Contractor's personnel's time, and (iii) such other details as Stryker Orthopaedics may reasonably require in order to identify the time spent to accomplish services under Contractor's agreement with Stryker Orthopaedics.

5. Reimbursement of Contractor's expenses shall be limited to:

(a) Air and train travel only by "coach" class or actual fare, whichever is less;

(b) Lodging at hotels that are generally considered medium cost (i.e., Marriott, Ramada, etc.);

(c) Taxi services will be reimbursed to and from the airport, as well as to and from the hotel to Stryker Orthopaedics;

(d) Meals at restaurants are generally considered medium priced, taking into account that no more than $40.00 shall be allowed for any day that a Contractor's staff member is required to perform work on behalf of Stryker Orthopaedics when an overnight stay is required;

(e) Unless provided by Stryker Orthopaedics' representative, reimbursement does not cover personal items or entertainment;

(f) Any other expense specifically authorized under Contractor's agreement with Stryker Orthopaedics or expressly agreed to in writing by Stryker Orthopaedics' authorized representative.

6. Expenses incurred in excess of the above, or otherwise not permitted hereunder, shall be borne by Contractor unless pre-authorized by Stryker Orthopaedics in writing. Expenses related to general Contractor overhead and back office work, such as administrative efforts, general management expenses and any other expenses not directly related to Stryker Orthopaedics' work, shall not be reimbursed by Stryker Orthopaedics.

7. Reservations for travel and hotel accommodations must be made in advance through Stryker Orthopaedics' travel services provider, BCD Travel (1-866-826-1929) or, as otherwise directed by Stryker Orthopaedics, using Stryker Orthopaedics' name, to take advantage of Stryker Orthopaedics discounts and rates.

EXHIBIT C

Project Name ______________________
Project Number ______________________
Project Description ______________________
____
Quote Reference ______________________
Specification Ref. ______________________
PO Reference ______________________
Stryker Approver ______________________

Materials:

	Qty.	Item Description	Cost (Invoice Required)	Markup%	Customer Cost
1.					
2.					
3.					
4.					
5.					
6.					

Labor:

	Employee Name	Date	Start Time	Stop Time	Reduction for Lunch/ Breaks	Billable Hour	Rate	Ext. Cost
1.								
2.								
3.								
4.								
5.								
6.								

Exhibit D
Project Management Change Request Form

Project Name:		Date:
Change Request Name (ID):	Requestors Name:	Associated Issue No(s):
Description of Proposed Change:		
Benefit of Change:		
Implications of Not Making This Change:		
Related Change Request:	Attachments/References:	

Description of Charter, Schedule and/or Budget Changes (include new milestone dates, deliverable changes, resource requirements, budget changes, etc.)

Change Request Status		
☐ Approved	☐ Rejected (provide comment)	☐ Pending (provide comment)
Approvers Name:		
Approval Signature:		